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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,607	05/25/2005	Emmanuel Martin	HP15-22797/MA 2231/PCT	2273
324	7590	12/03/2008	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			PEZZUTO, HELEN LEE	
		ART UNIT	PAPER NUMBER	
		1796		
		MAIL DATE	DELIVERY MODE	
		12/03/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,607	<b>Applicant(s)</b> MARTIN ET AL.
	<b>Examiner</b> Helen L. Pezzuto	<b>Art Unit</b> 1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 October 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,4,6-8,10,13-21 and 23-25 is/are pending in the application.

4a) Of the above claim(s) 7,8,19,20,23 and 24 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,4,6,10,13-18,21 and 25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-2, 4, 6-8, 10, 13-21, 23-25 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

Applicant's amendment to claims 1, 2, 4, 21, the cancellation of claims 5, 9, 11-12, and the addition of claims 23-25 filed in the response on 10/1/08 is acknowledged. Currently, claims 1-2, 4, 6, 10, 13-18, 21, and 25 are under consideration in this application.

***Election/Restrictions***

1. This application contains claims 7-8, 19-20, 23-24 drawn to an invention nonelected with traverse in the reply filed on 9/18/07. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. Claims 7-8, 19-20, 23-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/18/07 wherein both a cationic and a nonionic monomer species were elected to be present. Thus, constitutes a copolymer product containing both monomer units.

***Response to Arguments***

3. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 and claims dependent thereon are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "wherein the cationic polymer in the form of...". There is insufficient antecedent basis for the "cationic" limitation in the claim.

Furthermore, please correct the spelling of "particles" in the amended claim 1.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1796

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-2, 4, 6, 10, 13-18, 21, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggin et al. (US-600) or Shulman et al. (US-756) or DE 101 16 491 A1.

US 5,114,600 to Biggin et al. discloses a fabric conditioning formulation comprising a crosslinked cationic polymer, a cationic softener, and conventional additives (see abstract). Specifically, prior art teaches a cationic polymer derived from quaternized dialkylaminoalkyl (meth)acrylate, acrylamide, and 5-45 ppm of a crosslinking agent such as methylene bisacrylamide, which abuts the instant less than 5 ppm (col. 3, lines 1-20). Furthermore, chain transfer agent was suggested to control the degree of crosslinking and branching in the resultant polymer (col. 4, lines 1-29). Prior art suggests adding cationic polymer particles in less than 10 micrometers in size, which abuts the instant average particle size of more than 10 $\mu$ m expressed in amended claim 1. Since the claimed amount of crosslinking agent and average particle size abut those of

US-600, the examiner is of the position that such abutting ranges, though not overlapping, are sufficiently close that they establish prima facie case of obviousness because one having ordinary skill in the art would expect them to have identical or near identical properties.

US 6,451,756 B2 to Shulman et al. discloses a method of promoting soil release from fabric comprising contacting polycarboxylic polymers of Formula I with fabric (see abstract). One of patentees' embodiments entails combining the polymer with a rinse added fabric softener through the rinse cycle of the washing operation (col. 5, lines 54-56; col. 11, lines 45-64). Prior art polymer defined by Formula I contains monomer C which maybe one or more cationic or non-ionic monomer, including DMAEMA, DADMAC, and acrylamide defined within the scope of the instant formulas (I) and (II) (col. 4, line 39 to col. 5, line 7). Prior art discloses the optional inclusion of crosslinking agent, but is not particularly limited to any amount. US-756 is silent regarding the particle size of the polymer.

Similarly, DE 101 16 491 A1 discloses a textile conditioning composition comprising 1-10 wt% of esterquats fabric softener, 1-10 wt% of dimethyldiallylammonium chloride-acrylamide cationic copolymer, and up to 100 wt%

water and other additives (see abstract). DE-491 is silent regarding the inclusion of crosslinking agent and particle size of the cationic copolymer. The examiner is of the position that the absence of crosslinking agents is within the recited amount of less than 5ppm by weight.

US-756 and DE-491 discussed above are silent regarding the particles size expressed in the present claims. Being silent prior art is generic to any particles size, inclusive of applicant's, absent showing of unexpected results commensurate in scope with the recited particles size. Biggin et al of US-600 specifically teaches control of particles size in emulsion or reverse phase polymerization by controlling the shear applied to the monomers and by using different emulsifying agent (col. 4, lines 43-62). Accordingly, it would have been obvious to one having ordinary skill in the art to determine the optimum particle size suitable for its utility in fabric softener formulations, motivated by the reasonable expectation of success as taught. Such discovery of an optimum value of a result effective variable would involve only routine skill in the art. Thus, rendering obvious the present claims.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L. Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached

on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen L. Pezzuto/  
Primary Examiner  
Art Unit 1796

hlp